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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

NANCY KOHLERMAN, an individual,

Plaintiff,

v.
NO-APPOINTMENT M.D., an Arizona
professional limited liability company,

Defendant.

Case No.

COMPLAINT

The Plaintiff, Nancy Kohlerman, on behalf of herself and others similarly situated, brings this action against the Defendant, No-Appointment M.D. ("NAMD"), and hereby alleges as follows:

1. This is a collective action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA") to recover unpaid overtime, filed by the Plaintiff on behalf of all persons who at any time during the past three years and up and until the date of entry of judgment are or were employed by the Defendant as "Nurse Practitioners" or "Physician Assistants."

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

1 entirely dependent upon the quantity of hours scheduled, the Defendant nevertheless treats
2 them as “exempt” employees for purposes of the FLSA’s overtime requirements.

3 10. This action is filed on behalf of all Physician Assistants and Nurse Practitioners
4 who are improperly classified as “exempt” employees, and therefore deprived of overtime
5 compensation, to recover all overtime pay due to them under federal law. These persons
6 include all current and former Physician Assistants and Nurse Practitioners employed at any of
7 the Defendant’s offices during the three years preceding the filing of this action.

8 11. Pursuant to the Defendant’s uniform employment policies, Physician Assistants
9 and Nurse Practitioners are classified as “exempt” and not paid for overtime. During the class
10 period, the employees at issue have consistently been denied overtime compensation.
11 Defendant’s non-compliance with the requirements of the FLSA was and is willful.

12 12. The Plaintiff and all other members of the collective action are paid by the
13 Defendant exclusively on an hourly basis and are not paid a salary or fee. They have received
14 no overtime pay as required by law.

15 13. The Plaintiff and other class members are not professionally exempt because
16 they do not meet the standard test (salary basis test) for such exemption. The FLSA’s
17 exemption to the salary or fee requirement for employees who “practice medicine” does not
18 apply to Physician Assistants or Nurse Practitioners. *See Belt v. Emcare, Inc.*, 444 F.3d 403
19 (5th Cir. 2006).

20 14. The Plaintiff worked approximately 20 hours of overtime per week during the
21 duration of her employment for which she was not paid an hourly rate or time-and-a-half
22 under the FLSA. For this time, she is entitled to \$96,750 in compensatory damages plus other
23 relief afforded under the FLSA including double damages.

24 15. Upon information and belief, some evidence generally exists reflecting the
25 number of overtime hours worked by each class member and the compensation rates for the
26

relevant work periods. While the Plaintiff is unable to state at this time the exact amount owing to the class, the Plaintiff proposes to obtain such information by appropriate and focused discovery proceedings to be taken promptly in this action, and requests that damages or restitution be awarded according to proof obtained and presented to the Court. When an employer fails to keep such time records, employees may establish the hours worked solely by their testimony and the burden of overcoming such testimony shifts to the employer.

COLLECTIVE ACTION ALLEGATIONS

16. Paragraphs 1-15 are incorporated by reference as if fully set forth herein.

17. The Plaintiff brings this FLSA collective action on behalf of herself and all other persons similarly situated pursuant to 29 U.S.C. § 207 and 216(b), specifically as follows:

All persons employed by the Defendant, in the state of Arizona, as Physician Assistants or Nurse Practitioners, within three years preceding the filing of this action, who were paid on an hourly basis and worked more than 40 hours in any given work week or, alternatively (pursuant to an agreement or understanding between the Defendant and such person) more than 80 hours in any given two-week period or more than 8 hours in any day during such two-week period, and were not paid overtime compensation by the Defendant.

The Plaintiff reserves the right to amend or refine the definition of the class following discovery of the Defendant's books and records.

18. The Plaintiff is unable to state the exact number of the class without discovery of the Defendant's books and records but estimates the class to be approximately 8 individuals.

19. There are questions of law and fact common to the class predominate over any questions affecting individual members only. These factual and legal questions include:

- a. Whether the Defendant's PAs and NPs were uniformly classified as exempt, in violation of the FLSA;

- b. Whether the Defendant failed to pay the Plaintiff and class members all overtime compensation due to them by virtue of their uniform designation of such employees as exempt;
- c. Whether the Plaintiff and class members worked overtime;
- d. Whether the Plaintiff and the class members were paid on an hourly basis;
- e. Whether the Plaintiff and class members fit within the FLSA's exception of the salary or fee requirement for employees who "practice medicine" ;
- f. The correct statute of limitations for the Plaintiff's and the class members' claims;
- g. The correct method of calculating back overtime pay;
- h. Whether the Plaintiff and class members are entitled to compensatory damages, and if so, the means of measuring such damages;
- i. Whether the Defendant is liable for pre-judgment interest; and
- j. Whether the Defendant is liable for attorneys' fees and costs.

20. The Defendant has acted and refused to act on grounds generally applicable to the class.

21. The claims of the representative Plaintiff are typical of the claims in the class in that the Plaintiff was denied mandatory overtime wages as a result of the Defendant's uniform policy of treating its PAs and NPs as exempt employees. This is the predominant issue which pertains to the claims of each and every class member.

22. The collective action is superior to other available methods for a fair and efficient adjudication of the controversy.

23. The Plaintiff will fairly and adequately protect the interests of the class, as her interests are in complete alignment with those of the entire class, *i.e.*, to prove and then

1 eradicate the Defendant's illegal employment practices of not paying overtime wages to its
2 PAs and NPs.

3 24. Counsel for the Plaintiff will adequately protect the interests of the class. Such
4 counsel is experienced with employment/wage and hour litigation and is qualified to serve as
5 class counsel.

6 25. The Plaintiff and the class she represents have suffered, and will continue to
7 suffer, irreparable damage from the illegal policy, practice and custom regarding the
8 Defendant's pay practices.

9 26. The Defendant has engaged in a continuing willful violation of the FLSA.

10 27. The Plaintiff, as well as the individuals she represents, was denied overtime
11 compensation as a result of the Defendant's pay practices.

12 28. The Defendant's action in denying overtime wages to the Plaintiff was
13 intentional and constitutes a willful violation of the FLSA.

14 **FLSA OVERTIME VIOLATION**

15 29. Paragraphs 1-28 are incorporated by reference as if fully set forth herein.

16 30. At all relevant times, the Defendant has been an employer engaged in interstate
17 commerce consistent with 29 U.S.C. §§ 206(a) and 207(a). At all relevant times, the
18 Defendant employed the Plaintiff and each member of the collective action class consistent
19 with the terms of the FLSA.

20 31. At all relevant times, the Defendant has had annual gross revenues in excess of
21 \$500,000.

22 32. As a consequence of the Defendant's employment practices regarding its PAs
23 and NPs, the Plaintiff and the class have been denied statutory overtime wages.

